

THIS ORDER SETS A REMOTE HEARING.
DO NOT COME TO THE COURTHOUSE.

Filed
D.C. Superior Court
12/28/2021 18:36PM
Clerk of the Court

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
DOMESTIC RELATIONS BRANCH**

GLADIS HERNANDEZ MEZTIOZA, :
Plaintiff, :
 :
v. : Case No. 2021 DRB 002118
 : Judge Deborah J. Israel
MARVIN ANABEL VILLOLOBOS, :
Defendant. :

**ORDER GRANTING ORAL MOTION FOR CONSTRUCTIVE SERVICE
AND SETTING CONTINUED INITIAL HEARING**

This matter came before the Court through Plaintiff Gladis Hernandez Meztioza's Complaint for Custody, filed September 10, 2021, concerning custody of minor children Fernandez Villolobos Hernandez, born December 7, 2012, and Allison Villolobos Hernandez, born November 25, 2014. Plaintiff is the minor children's mother; Defendant Marvin Anabel Villolobos is the minor children's father. In her Complaint, Plaintiff requests sole legal and sole physical custody of the minor children, alleging that Defendant is not present in the United States. She attaches to her Complaint a letter, dated June 30, 2014, indicating that Defendant was held in Immigration Holding around the same time (since June 17, 2014, according to the letter). This Court held an Initial Hearing on November 30, 2021. Plaintiff appeared, pro se. Defendant did not appear. The Court heard testimony from Plaintiff that corroborated the allegations set forth in her Complaint. She stated that Defendant was deported to Honduras in 2014, and that she is pursuing this litigation because she is trying to obtain passports for the minor children, but was told to do so she needed the signed consent of Defendant.

This Court now treats Plaintiff's testimony at the Initial Hearing as an oral motion for constructive service. Plaintiff's request for constructive service need not be in writing, as the D.C. Court of Appeals has held that "motions incidental to or made during a hearing or trial made be

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made orally; formal written notice is not required. Rule 7(b)(1) specifically exempts oral motions in such circumstances from rigid requirements of particularity, since they will be recorded in the minutes of the trial or hearing.” *Benmings Associates v. Joseph M. Zamoiski Co.*, 379 A.2d 1171, 1173 (D.C. 1977). Furthermore, the Court of Appeals has previously permitted the use of oral motions regarding service of process. For example, in *Packheiser v. Miller*, 875 A.2d 645 (D.C. 2005), the Court of Appeals found no issue with the trial court granting the Plaintiff’s oral motion to extend Plaintiff’s deadline to achieve service of process under Rule 4(m) for an additional sixty days. This analogous case provides the authority for Plaintiff Hernandez Meztioza to utilize an oral motion for constructive service. Having found the requisite authority, the Court will now answer the substantive question of whether Plaintiff has met the requirements to be able to effectuate constructive service.

The Court of Appeals has not yet explicitly issued a ruling regarding constructive service in the context of custody proceedings. However, it has established rules for constructive service in the context of divorce, neglect, and adoption proceedings, forms of family-law litigation that have similar legal frameworks to custody proceedings. In divorce cases, in order for the Court to permit constructive service, a plaintiff in must provide the Court with the following information:

(1) The time and place at which the parties last resided together as spouses; (2) the last time the parties were in contact with each other; (3) the name and address of the last employer of the defendant either during the time the parties resided together or at a later time if known to the plaintiff; (4) the names and addresses of those relatives known to be close to the defendant; and (5) any other information which could furnish a fruitful basis for further inquiry by one truly bent on learning the present whereabouts of the defendant. From such basic information, the plaintiff should then detail for the court the particular efforts which have been made in the effort to ascertain the defendant’s present address. *Bearstop v. Bearstop*, 377 A.2d 405, 408 (D.C. 1977).

At the Initial Hearing, Plaintiff testified to the following: (1) that she has lived in Washington, D.C., since December of 2019; (2) that Plaintiff was deported to Honduras in 2014; (3) that she

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has not had any communications with him since he was deported; (4) that, after he was deported, she left a letter containing her contact information (phone number) at a church in Maryland, for Defendant's family to obtain; (5) that she has not heard from him or his family since he was deported; and (6) that she knows of no family or friends of Defendant's in Honduras. The D.C. Court of Appeals requires that plaintiffs in divorce matters first pursue "all the channels of available information," to be permitted to use constructive service by posting. See *Bearstop*, 409. In this case, due to the unusual context in which the Complaint for Custody arises (as the litigation is a byproduct of Defendant's deportation to Honduras), Plaintiff has *no channels of available information*. Constructive service is thus the *only means* by which Plaintiff has even a modicum of a chance to reach Defendant.

Furthermore, the D.C. Court of Appeals has held that personal service need not always been attempted before constructive service is authorized in the context of neglect proceedings, if "the facts indicate that such an attempt would have been futile." *In re N.*, 446 A.2d 16, 18 (D.C. 1982). In *In re N.*, the Court of Appeals upheld constructive service upon a father regarding notice of a hearing about the termination of his parental rights when the relevant social workers made diligent efforts to locate the father, but (1) no record of the father existed, (2) the social worker assigned to the case had not heard from him in six years, (3) attempts to locate him through other family members were unsuccessful, and (4) the father was not in prison and his parole officer was unaware of his whereabouts. The Court subsequently held that "diligent efforts to locate appellate were certainly made... All possible leads were explored and affidavits regarding these efforts were presented in court and made part of the record." In this case, Plaintiff Meztioza Hernandez has *no leads* with which to begin an investigation into Defendant Anabel Villolobos' whereabouts. Furthermore, the party of *In re N.* that was pursuing such leads was the government of the United

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States, an institution equipped with vast resources, time, and money to expend in its search for wanted parties. Plaintiff is not so endowed. Plaintiff has used what limited resources she has to make herself available and accessible to Defendant, despite his deportation, and has made these efforts part of the Court record.

Finally, the Court of Appeals has held in adoption cases that constructive service by posting may be utilized where personal service is unsuccessful, so long as the service is...

... reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections... Notice must reasonably convey the necessary information and afford a reasonable time for interested parties to appear before the court... A 'mere gesture' is insufficient to meet the due process standard; something more is needed... The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it... This reasonableness test and ultimately the constitutional validity of the selected method of notice may be met where it is reasonably certain to inform those affected, or where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes. *In re. N.N.N.*, 985 A.2d 1113, 1123 (D.C. 2009).

In this case, constructive service is reasonable precisely because "conditions do not reasonably permit such notice," due to Defendant's deportation to Honduras. As such, constructive service fits the requirement that the form of service chosen "is not substantially less likely to bring home notice than other of the feasible and customary substitutes." Plaintiff, unfortunately, has no other avenues of service to pursue. Constructive service via posting *is the only available option*. As such, it is no mere gesture, but the last possible bastion of defense for Defendant as Plaintiff pursues this custody claim.

In light of the Court of Appeals' consistent permission of the use of constructive service in contexts analogous to custody proceedings (namely, divorce, neglect, and adoption proceedings), this Court finds the necessary authority to permit Plaintiff Hernandez Meztioza to utilize posting

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under D.C. Code § 13-340(a) (authorizing service by posting in lieu of publication). The Court will direct the Clerk's Office to post the notice below.

In addition, prior to the next hearing, **Plaintiff must file an Affidavit in Compliance with the Servicemembers Civil Relief Act.** If Plaintiff has questions about how to meet this requirement, she may contact the Family Court Self-Help Center by calling telephone number 202-879-0096. The Court cannot grant a judgment until the SCRA Affidavit is docketed with the Court.

Accordingly, it is, this 28th day of December 2021, hereby,

ORDERED, that Plaintiff Gladis Hernandez Meztioza's oral motion for constructive service is **GRANTED**. It is further

ORDERED, that the Clerk's Office of the Family Court of the Superior Court of the District of Columbia shall post the following notice on the Court's website for a period of twenty-one calendar days.

[Order continues on next page:]

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Superior Court of the District of Columbia

Case No. 2021 DRB 002118

Gladis Hernandez Meztioza, Plaintiff,

Versus

Marvin Anabel Villolobos, Defendant.

Plaintiff Gladis Hernandez Meztioza has filed a Complaint for Custody.

The Court will hold a remote Continued Initial Hearing on this request on March 3, 2022 at 2:45 PM. If Defendant Marvin Anabel Villolobos does not appear at the hearing or otherwise respond to the Complaint, the Court may enter default against Defendant and thereafter proceed without him.

So ordered on December 28, 2021.

Judge Deborah J. Israel, Superior Court of the District of Columbia.

IT IS FURTHER ORDERED, that Plaintiff shall file by **February 17, 2022** an Affidavit in Compliance with the Servicemembers Civil Relief Act. It is further

ORDERED, the parties shall appear for a **remote** Continued Initial Hearing on **March 11, 2022 at 2:00 PM.** Failure to appear may result in the issuance of a default judgment, a dismissal, or sanctions.

**Instructions to Attend Remote Hearing or Trial
Before Judge Deborah J. Israel in Remote Courtroom JM5**

If you are able to do so, you must participate by video. If you are unable to participate by video, you may participate by telephone, but you need to obtain the Court's permission to do so in advance of your hearing. If you have any questions or concerns, please contact chambers at

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JudgeIsraelChambers@dcsc.gov. If you don't have access to email, you may leave a voicemail at 202-879-1844, and we will return your call.

Please note:

- If you are placed in the courtroom lobby, please wait until the Court admits you to the remote courtroom.
- When you reach the remote courtroom, there may already be a hearing in progress. Please wait for the judge or courtroom clerk to address you before you speak.
- Before and during your hearing, please mute your video/phone whenever you are not speaking. Doing so makes it easier for the Court to understand those speaking.

To access the remote courtroom by computer with video (two options):

(1) Open Web Browser in Google Chrome and enter:
<https://dccourts.webex.com/meet/ctbjm5>. Select Join Meeting.

OR

(2) Open Web Browser in Google Chrome and enter: <https://dccourts.webex.com>. Select Join Meeting, enter Meeting ID: 129 641 6611.

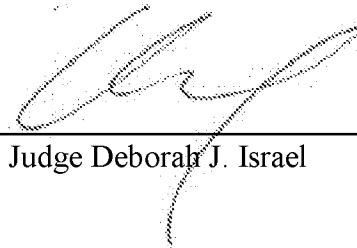
To access the remote courtroom by smartphone or tablet with video:

Go to App Store, Download WebEx App (Cisco WebEx Meetings), select Join Meeting, enter: <https://dccourts.webex.com/meet/ctbjm5>, enter your name and e-mail.

To access the remote courtroom by phone (ONLY WITH PERMISSION OF THE COURT):

Call 1 (202) 860-2110 or 844-992-4726 and enter Meeting ID:129 641 6611##.

IT IS SO ORDERED.



Judge Deborah J. Israel

Copies to:

Gladis Hernandez Meztioza
Hgladis392@gmail.com
Via Email
Plaintiff